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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,358	03/03/2004	Charles L. Branch	4002-3471/PC689.02	4260

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KRIEG DEVAULT LLP
ONE INDIANA SQUARE, SUITE 2800
INDIANAPOLIS, IN 46204-2709

EXAMINER

PHILOGENE, PEDRO

ART UNIT	PAPER NUMBER
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3733

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/20/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/792,358

Applicant(s)

BRANCH ET AL.

Examiner

Pedro Philogene

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-16 and 26-51 is/are allowed.
- 6) ☒ Claim(s) 1-6, 18, 19, 21 and 23-25 is/are rejected.
- 7) ☒ Claim(s) 20, 22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application
- ☐ Other: _____.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 17,21,23,24,25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grieshaber (2,693,795) in view of Healy (4,380,999).

With respect to claim 1, Grieshaber discloses a retractor assembly comprising a first retractor portion (31) having a proximal end and a distal end and being positionable in an incision; a second retractor portion (39) having a proximal end and a distal end and being positionable in the incision opposite the first retractor portion, the first and second retractor portions defining an axis extending there between; a separation instrument (10) coupled between the proximal ends of the first and second retractor portions and being offset to one side of the axis; as best seen in FIG.1, the separation instrument being operable to move the first and second retractor portions along the axis from an insertion configuration wherein the first and second retractor portions are adjacent one another to a second configuration wherein the first and second portions are separated from one another; and an intermediate retractor assembly (13) removably mountable to the separation instrument, the intermediate retractor assembly including a linking arm (46) extending from the separation instrument toward the first and second retractor portions to a retractor blade (64), the retractor blade being transversely oriented to the linking arm and being positionable in the incision between the first and

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second retractor portions when the linking arm is mounted to the separation instrument and the first and second retractor portions are in the second configuration.; as set forth in column 2, lines 20-80, column 3, lines 1-85, column 4, lines 173; and as best seen in FIGS.1-9.

With respect to claims 6,17,18,21,23-25, Grieshaber discloses all the limitations; as set forth in column 2, lines 20-80, column 3, lines 1-85, column 4, lines 173; and as best seen in FIGS.1-9.

It is noted that Grieshaber did not teach of a linking arm including a hook portion; as claimed by applicant. However, in a similar art, Healy evidences the use of retractor having a linking arm including a hook portion for engaging or hooking a separation instrument.

Therefore, given the teaching of Healy, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Grieshaber, as taught by Healy to engage of hook a separation instrument.

Claims 18,19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grieshaber (2,693,795) in view of Healy (4,380,999) in view of Koros et al. (6,139,493)

With respect to claims 18,19, it is noted that the above combination of references did not teach of intermediate third and fourth retractor portions; as claimed by applicant. However, in a similar art, Koros et al evidences the use of a third and fourth retractor portions to provide a clearer or greater view of the operating site.

Therefore, given the teaching of Koros, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of

Grieshaber/Healy, as taught by Koros et al to provide a clearer or greater view of the operating site.

Allowable Subject Matter

Claims 20,22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 7-16,26-51 are allowed.

Response to Amendment

Applicant's arguments, see Remark, filed 12/7/06, with respect to the rejection(s) of claim(s) 1-6,17,18,21,23-30,32-34,43-45 under 102/103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Healy.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

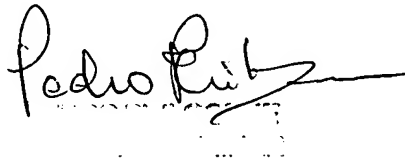
TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Pedro Philogene
February 9, 2007

A handwritten signature in black ink, appearing to read "Pedro Philogene", with a stylized flourish extending to the right. Below the signature, there is a faint, rectangular stamp or box.